

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ROBERT EVANS, et al.	:	
	:	Case No. 2:08 CV 794
Plaintiffs	:	
	:	
v.	:	JUDGE MARBLEY
	:	
BOARD OF EDUCATION,	:	MAGISTRATE KEMP
SOUTHWESTERN CITY SCHOOL	:	
DISTRICT, et al.	:	
	:	
Defendants	:	

**PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO**  
**PLAINTIFFS' MOTION FOR LEAVE TO**  
**IDENTIFY REBUTTAL EXPERT (DOC.97)**

Defendants' recitation of the length of time the case has been pending and the delay in seeking leave to name a rebuttal expert is missing one critical item: any showing that Defendants will suffer prejudice if the motion is granted. Defendants argue that they will be prejudiced, but it is simply a bald assertion. They have pointed to no real prejudice because there will be none – if the motion is granted, Plaintiff will name a rebuttal expert. There will be plenty of time for that expert to be deposed and for Defendants' expert, Dr. Smalldon, to respond if Defendants chose to have him respond. Real prejudice will occur if the motion is not granted: as noted in Plaintiffs' Motion for Leave, Dr. Smalldon conducted a number of tests which Plaintiffs' counselor, Ms. Dorn, cannot perform. Yes, there has been a delay in seeking a rebuttal expert, but Plaintiff should not be punished for this delay. The purpose of the request and granting Plaintiff's Motion will result in no prejudice to Defendants.

Respectfully submitted,

/s/ John S. Marshall

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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties, by email transmission on this \_\_\_\_\_ day of June, 2010.

By /s/ John S. Marshall

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